IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 2ND FEBRUARY 2007 / 13TH MAGHA 1928

Crl.MC.No. 731 of 2006()

CC.47/2005 of JUDL. MAGISTRATE OF FIRST CLASS COURT, THALASSERY

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PETITIONER:

K.V.AJEESH, S/O.PADMANABHAN & APPAN,
KUNNATHVALAPPIL HOUSE, ECHILAMVAYAL,
P.O.VELLOOR, (VIA) PAYYANNUR, KANNUR DISTRICT.

BY ADV. SRI.M.SASINDRAN
SRI.M.B.PRAJITH

RESPONDENTS: COMPLAINANT

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1. STATE REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. THE STATION HOUSE OFFICER,
PAYYANNUR POLICE STATION, (CR.NO.120 OF 2000),
PAYYANNUR, KANNUR.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 02/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 731 OF 2006

Dated this the 2nd day of February, 2007

ORDER

The petitioner – a juvenile on the date of commission of the alleged offence, faces the allegations of having committed the offences punishable under Sec.498A and 306 read with Sec.34 of the IPC. Proceedings are pending before the Principal Magistrate/Juvenile Court.

2. The petitioner faced the allegations along with five other accused. The 1st accused is his maternal uncle. The deceased is the wife of the 1st accused. It was alleged that the 1st accused was guilty of matrimonial cruelty of the physical and mental variety against the deceased – his wife. Accused 2, 3 and 4 are the mother and sisters of the 1st accused. Accused 5 and 6 are the children of the 4th accused – a sister of the 1st accused. The precise allegation raised against accused 5 and 6 is that they used to compel the deceased to go to the milk society at Velloor with milk in the morning. This is the only allegation against the petitioner – the 5th accused in the final report submitted by the police. Inasmuch as accused

5 and 6 were children under the Juvenile Justice Act, the case against them was sent over to the Juvenile Court – the Principal Magistrate i.e., the Chief Judicial Magistrate. The petitioner was not available for trial. The 6th accused faced trial. He was found not guilty and acquitted. The adult offenders – accused 1 to 4 faced indictment before the Assistant Sessions Judge of Payyannur and by judgment dated 30/11/2005 in S.C.No.54/03 all of them were found not guilty and acquitted.

3. The petitioner is left to face the prosecution/enquiry before the Juvenile Court, the case against him having been split up and re-filed as C.C.No.47/05.

4. The learned counsel for the petitioner submits that the allegations against the petitioner do not justify the charge that he has committed the offences under Secs.498A and 306 read with Sec.34 of the IPC. It would be a traversity of justify to compel the petitioner to face the ordeal of trial/enquiry under the Juvenile Justice Act. In the light of the dictum in **Moosa v. Sub Inspector of Police** (2006 (1) KLT 552 (FB)), the learned counsel for the petitioner does not claim premature termination of the proceedings against him for the reason that the co-accused have been found not guilty and acquitted. He only

contends that the allegations against the petitioner are palpably unacceptable and continuance of the prosecution will work out injustice and prejudice of worst variety against the petitioner.

5. I have been taken through the allegations in detail. Except that the petitioner – a minor child, used to request/insist/compel the deceased – an adult wife of his uncle to take milk to the milk society at Velloor, there is no allegation whatsoever against the petitioner. The short question is whether this can be reckoned as an abetment of the commission of suicide or wilful conduct which is likely to drive the woman to commit suicide. I am inclined to agree with the learned counsel for the petitioner that the allegations raised, even if accepted in toto, cannot expose the petitioner to any consequence of culpability.

6. The learned Public Prosecutor fairly submits that there is no allegation whatsoever against the petitioner and, in these circumstances, the State does not also have any serious objection against the quashing of the proceedings. I reckon that as a fair and reasonable stand taken by the learned Public Prosecutor. I am satisfied that the continuance of the

prosecution against the petitioner will result in unnecessary prejudice and hardship against the petitioner and failure of justice. I am satisfied that this is certainly a fit case where the powers under Sec.482 of the Cr.P.C. can and ought to be invoked in favour of the petitioner to bring to premature termination the prosecution against him.

7. In the result:

(a) This Crl.M.C. is allowed.

(b) C.C.No.47/05 pending before the Principal Magistrate (Juvenile Court), Thalassery, is hereby quashed.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge